

**REMARKS**

Claims 1-26 are pending in the current application. Claims 1, 10, 16, 19, and 23 are independent claims.

**Allowable Subject Matter**

Initially, Applicants wish to thank the Examiner for indication that claims 19-22 are allowed. Furthermore, Applicants wish to thank the Examiner for indication that claims 3 and 4 contain allowable subject matter. By this Amendment, Applicants have amended independent claims 1 and 10 to include the limitations of claim 2 and 3, thereby rendering the rejections of these independent and associated dependent claims moot. No further discussion of these rejections will be made herein.

**CLAIM REJECTIONS 35 U.S.C. § 103**

Claims 16-18 and 23-26 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Ofuji et al. (US 2003/0181163, hereinafter Ofuji) in view of Tong et al (US 2001/0034236, hereinafter Tong).

Ofuji is directed to selection of mobile stations so as to prevent directional beams from interfering with each other in an application of a directional antenna (Ofuji, abstract). The Examiner has admitted that Ofuji does not disclose or suggest “transmitting a pilot signal to the user population using the preferred beam; scheduling a user based on feedback received in response to the pilot signal; and transmitting information on the preferred beam to the scheduled user” (See Office Action mailed June 13, 2006, page 4). However, the Examiner relies on Tong to teach such features.

The Examiner asserts that Tong discloses transmitting a pilot signal to the user population using the preferred beam. Applicants disagree.

As described in paragraph [0048] of Tong, “the pilots are sent continuously... [t]he user terminal measures the various received pilot signals to determine which received beam provides the best channel quality” (emphasis added). As such, Tong does not disclose transmitting a pilot signal on the preferred beam, but rather transmits a continuous signal on all beams. Tong also discloses that “each user terminal reports the code of the pilot signal with the best instantaneous carrier to interference ratio” (Tong, para. [0050]). Tong further discloses that the “BTS then schedules the packet transmissions across the beam identified as the best beam by the user terminal” (Tong, para. [0050], emphasis added).

Therefore, Tong discloses sending contiguous signals on all beams and lets the user decide the best beam. Such a disclosure teaches away from the claimed invention. As such, Tong cannot disclose or suggest “A method of transmitting information to a user...selecting a user from a user population...generating a preferred beam **for** the selected user...transmitting a pilot signal to the user population using the preferred beam” as recited in independent claim 16 (emphasis added).

Furthermore, the Examiner fails to establish a *prima facie* case of obviousness under 35 U.S.C. § 103. Rather, the Examiner asserts that the combination of Ofugi and Tong would have been obvious “in order to use priorities for packets to be transmitted to users” (See Office Action mailed June 13, 2006, page 5). Applicants are confused as to how such a statement provides motivation, and furthermore, where such a statement exists in the prior art<sup>1</sup>. Moreover, the

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<sup>1</sup> Unless the Examiner is contending that such motivation exists in the knowledge available to one of ordinary skill in the art, at the time the invention was made, without documentary evidence ( MPEP § 2144.03 requires a statement to that effect by the Examiner in the form of Official Notice)

Examiner has previously asserted that Ofugi tracks parameters that represent a duration of time since the user has received its last packet (See Office Action mailed June 13, 2006, page 2). Applicant submits that this may be a form of priority. Therefore, the establishment of motivation is null because such “priorities” (as asserted by the Examiner) already exist in Ofugi. As such, a *prima facie* case of obviousness **has not been made**.

Therefore, for all of the reasons stated above, claim 16 is patentable over Ofugi (alone, or in any combination with Tong).

Furthermore, with regards to claim 23, the Examiner relies on the same statement of motivation with regards to claim 16 and provides no indication of where in the prior art such evidence of motivation can be found.

Moreover, as discussed above, Tong simply transmits contiguous signals on all beams and discloses that the user selects the best beam. Therefore, Tong cannot disclose or suggest “determining a preferred beam for the user so as to maximize the selected user's chances to be scheduled to receive the next packet” as recited in independent claim 23.

Therefore, for all of the reasons stated above, claim 23 is patentable over Ofugi (alone, or in any combination with Tong).

Claims 17-18 and 24-26 are patentable at least by virtue of their dependency upon independent claims 16 and 23, respectively.

Applicants respectfully request the Examiner withdraw this art grounds of rejection.

**CONCLUSION**

Accordingly, in view of the above amendments and remarks, reconsideration of the objections and rejections and allowance of each of the claims in connection with the present application is earnestly solicited.

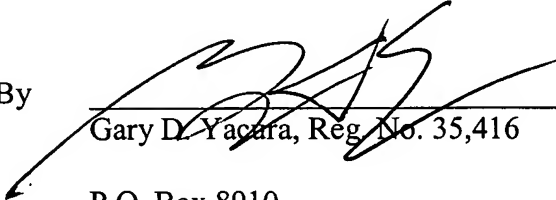
Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Gary D. Yacura at the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

HARNESS, DICKY, & PIERCE, P.L.C.

By

  
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